

Subject: EIS scoping comments on the ACMP

From: Teri Camery <Teri_Camery@ci.juneau.ak.us>

Date: Tue, 26 Jul 2005 15:59:31 -0800

To: "john.king@noaa.gov" <john.king@noaa.gov>, "helen.bass@noaa.gov" <helen.bass@noaa.gov>

CC: Dale Pernula <Dale_Pernula@ci.juneau.ak.us>, Peter Freer <Peter_Freer@ci.juneau.ak.us>, "Glenn Gray (glenn@glennggray.net)" <glenn@glennggray.net>

Hello Mr. King and Ms. Bass,

Attached in pdf are our EIS scoping comments on the proposed changes to the Alaska Coastal Management Program. Please contact me at the number below if you have any questions.

Sincerely,
Teri Camery

Teri Camery, Planner, Coastal District Coordinator
CBJ Community Development Department
155 S. Seward
Juneau, AK 99801
teri_camery@ci.juneau.ak.us
(907) 586-0755
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OCRM scoping comments 7-26-05.PDF

Content-Type: application/pdf

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CITY/BOROUGH OF JUNEAU
ALASKA'S CAPITAL CITY

July 26, 2005

John King, Responsible Program Manager
OCRM Coastal Program Division
National Ocean Service
SSMC4 Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

Also via email: john.king@noaa.gov

Subject: Alaska Coastal Management Program EIS Scoping Comments

Dear Mr. King:

The purpose of this letter is to comment on the State of Alaska's application to the National Oceanic and Atmospheric Administration (NOAA) Office of Coastal Resource Management (OCRM) for amendment to the Alaska Coastal Management Program.

The City and Borough of Juneau opposed the passage of HB 191 in 2003 based on our belief that the legislation undermined a cornerstone of the program, that is, the due deference given to local districts (i.e. municipal governments and CRSA's) based on the enforceable policies of district plans. The basic architecture of the program gave local governments "a seat at the table" and a measure of local control regarding the conditions under which coastal development was allowed. Statutory amendments to the program, and the subsequent revised regulations and guidance have, in our opinion, significantly reduced these features of the program, and will have significant effects on coastal uses and resources.

Our effort in these scoping comments is to address the major themes of the revision and to highlight specific effects on the Juneau Coastal Management Program. We have voiced these concerns many times before to both OCRM and the State of Alaska. We have provided only a brief summary of these concerns here. A listing of our concerns contains at least the following:

Public Interest. Concentration of coastal decision making power into a single agency, the Department of Natural Resources, removes the "checks and balances" in the original ACMP that helped to balance the public interest. Specifically, elimination of the Coastal Policy Council (CPC) has reduced the opportunity for coastal districts and state agencies, other than DNR, to influence coastal decision making. The legislature created the CPC in 1978 and gave the coastal district representatives a majority of seats on the council expressly to provide for this balancing.

Regulatory Complications. DNR guidance for developing local enforceable policies has been confusing. The use of terms such as "flow from," "adequately address," and "avoid, minimize or mitigate" are difficult to understand, notwithstanding that the intent of the revisions to the program was to eliminate vague language. The revised ACMP regulations are not written in plain language, and they are confusing and difficult to understand. DNR's interpretation of the regulations has been confusing as well, especially with regard to acceptable enforceable policies. Additionally, the state is encouraging districts

John King, Responsible Program Manager
ACMP EIS Scoping Comments
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to replace enforceable policies with the powers exercised under their Title 29 and/or Home Rule powers. This will result in an added layer of review for applicants, the potential for conflicting requirements, and the potential for delays in project approvals.

Public Process. The regulations process lacked meaningful opportunities for public involvement or the involvement of the districts. The district/state team assembled for the initial revision to the regulations never discussed the content of the regulations. The policy direction from DNR regarding acceptable enforceable policies has been a moving target. The current interpretation of acceptable enforceable policies is much different than what DNR told the legislature during testimony on HB 191 in 2003. The proposed changes reduce public participation by eliminating many projects from ACMP reviews (by separating DEC review, reducing local enforceable policies, and expanding the A and B exemption lists), removing provisions for citizen lawsuits, and providing only minimum public noticing.

Effects on the JCMP. Contrary to assertions made by the state during the hearings on HB 191, CBJ will lose the Juneau Wetlands Management Plan (JWMP), since state standards and the revised regulations (and their interpretation) does not allow local policies to use the terms "avoid, minimize, or mitigate." A wetlands plan cannot be implemented through the program without these terms. The JWMP, adopted in 1992, is based on ten years of scientific research and offers specific management protocols designed to minimize impact on high value wetlands and promote development on low value wetlands through an expedited process. This plan was developed to provide a more predictable and prescriptive permit process than the Corps of Engineers offered, which is what the state promoted in the ACMP changes.

Keeping the JWMP in our local land use plan is not a substitute for the due deference of the ACMP, since we lose a value, programmatic link to Corps of Engineers permitting. Besides the JWMP, CBJ will lose many other valuable policies on issues such as streamside setbacks, coastal development, and seafood processing. DNR's excessively narrow regulations (and subsequent interpretations) exceed the intent of HB 191, where legislators were promised that districts would retain a meaningful role based on a broad interpretation of enforceable policies. In our view, the state has failed to address the concerns of the districts, with the result that meaningful district participation in the program is seriously eroded. Likewise, the ability of districts to provide for resource protection, where this is important to local residents, is compromised, and our ability to work cooperatively with local developers to identify appropriate local solutions has been hampered.

Thank you for this opportunity to comment.

Sincerely



Dale Pernula, Director
Community Development Department
(907) 586-0757
E-mail: Dale_Pernula@ci.juneau.ak.us

Cc: Honorable Bruce Botelho, Mayor
Rod Swope, City and Borough Manager

Subject: [Fwd: ACMP Scoping Comments]
From: "John King" <John.King@noaa.gov>
Date: Fri, 05 Aug 2005 08:27:05 -0400
To: Helen Bass <Helen.Bass@noaa.gov>

FYI

----- Original Message -----

Subject: ACMP Scoping Comments
Date: Fri, 5 Aug 2005 03:33:43 -0500
From: glenn@glenngrey.net
To: john.king@noaa.gov

August 5, 2005

John King
Responsible Program Manager
Coastal Program Division, OCRM
National Ocean Service, SSMC4, Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

Dear John:

I am submitting these comments for the scoping process for the EIS for the ACMP that OCRM will be completing. You agency will have a difficult task quantifying the effects of the changes to the ACMP, because these changes are extremely complex. As far as I can tell, the Office of Project Management and Permitting (OPMP) is as confused about these changes as Alaska's coastal districts. In fact, due to the complexity of the changes, OPMP staff have been unable to answer many of the questions I have posed to them.

Effect of ACMP Changes on Other Coastal Programs

Perhaps the most important consideration in the EIS should be the effect that the ACMP changes will have in setting a precedent for other coastal programs. If OCRM approves these changes, it must also consider the possibility that other states will follow suit and weaken their programs as well. These changes could have a profound impact to coastal resources and uses throughout the country.

Lack of State Laws

Because Alaska does not have the same kinds of environmental legislation as other coastal states, the changes will significantly affect its coastal uses and resources. Alaska does not have a shoreline protection act, growth management laws or "little NEPA" legislation. The EIS should include an analysis of what gaps will occur as a result of these changes. For example, the habitat standard has been an important method to reduce impacts to habitat throughout the years. The Office of Habitat Management and Permitting has only two simple statutes (and no corresponding regulations). Without effective laws to protect coastal resources and uses, there will be significant gaps in managing coastal resources and uses if these changes to the ACMP are approved.

Removal of Air and Water Quality

One of the most troubling changes to the ACMP is the removal of matters regulated by the Alaska Department of Environmental Conservation (DEC) from the ACMP consistency reviews. Removing air and water quality from ACMP reviews will make a mockery of the consistency review process. It is impossible to review the impacts to other coastal resources if one is not allowed to discuss impacts to air and water quality.

Although the issuance of DEC permits will constitute an ACMP finding, matters regulated by DEC will no longer be reviewed against other statewide standards or district enforceable policies. As a result, the removal of DEC will have significant impacts to coastal resources and uses.

Projects Outside the Coastal Zone

Under the new changes, projects outside the coastal zone will no longer be reviewed for consistency with the ACMP even if they have significant impacts to coastal resources and uses. Regardless of recent changes to ACMP regulations, the statutory changes in 2003 prevent the state from reviewing projects inland of the coastal zone boundary even if there are federal permits or federal activities involved. This change is especially important for major projects that occur just outside the coastal boundary. The potential impacts of this change should be quantified in the EIS.

Enforceable Policies

The apparent intent of the state is to eliminate the ability of coastal districts to establish effective enforceable policies. I don't know anyone in the state that understands the complex interpretation of the regulations by the state. The state has provided few examples of acceptable enforceable policies, and OPMP staff have been unable to clearly explain exactly what policies will be approvable. This change to the ACMP will likely have a great impact to coastal resources and uses, and the EIS should include an explanation of the limitations on district enforceable policies that an average person can understand.

Statewide Standards

The changes have significantly watered down the statewide standards. The EIS should include an in-depth comparison of the former and new statewide standards and include an analysis of the impacts of the weakened standards on coastal resources and uses. Of great concern are changes to the subsistence standard, the habitats standard, and the mining standard, but all changes to the standards should be addressed in the EIS.

Coastal Policy Council

The elimination of the Coastal Policy Council (CPC) should be addressed in the EIS. The CPC has been an active body in setting coastal policies, and elimination of this body will reduce the ability of coastal districts to participate in the ACMP.

Reduced Local Control

One of the cornerstones of the original ACMP was the involvement of coastal districts. The changes to the ability of coastal districts to establish enforceable policies, the elimination of the CPC, and the removal of coastal

1
district representation from the ACMP working group will disenfranchise coastal districts. If coastal districts are no longer engaged in coastal management, coastal resources will suffer.

OCS Oil and Gas

Changes to the ACMP appear to remove any ability for public involvement, including coastal districts, in the review of air and water quality aspects of Outer Continental Shelf (OCS) oil and gas projects. Because DEC does not have a permit and the state claims that districts may not have any air or water quality policies, there is no avenue for input into this important matter. An oil spill is the major concern of offshore oil and gas projects, and the consistency review will lose most of its meaning if districts and the public cannot address this important matter. I raised this issue at several teleconferences, but DNR has never explained just how projects in the OCS will be reviewed for consistency.

Public Participation

The changes to the ACMP will reduce public involvement in projects. First, addition of more projects to the "A" and "B" lists will remove these projects from any oversight, including public review and comment. Second, the legislation removed the ability of citizens to initiate law suits on ACMP consistency determinations. Without the threat of a law suit, the state has no incentive to involve the public. Third, the Governor's office has sent out at least two directives to agency staff to only do the minimum public noticing that is legally required. Considering that many Department of Natural Resources permits have no public notice requirements, provisions for public participation will be severely reduced.

These brief comments highlight some of the most important considerations that should be addressed in the EIS. There are many more changes, and the EIS should evaluate the cumulative impact of all the changes.

While I appreciate that OCRM is concerned that Alaska may drop out of coastal management, at some point an ineffective program is worse than no program at all. I hope that OCRM will do a thorough analysis of the changes to the ACMP to determine to what extent the new program will be effective.

I am available to provide additional clarification to these comments, and I may be reached by email or by calling 907-789-7822.

Sincerely,

Glenn Gray

Subject: AOGA Comments Re: OCRM EIS

From: Kara Moriarty <moriarty@aoga.org>

Date: Fri, 05 Aug 2005 11:18:41 -0800

To: John.King@noaa.gov

CC: Bill Jeffress <william_jeffress@dnr.state.ak.us>, Randy Bates <Randy_Bates@dnr.state.ak.us>, helen.bass@noaa.gov, tom_irwin@dnr.state.ak.us, moriarty@aoga.org, "Judy Brady" <brady@aoga.org>, "Marilyn Crockett" <crockett@aoga.org>, "Tamara Sheffield" <sheffield@aoga.org>

Mr. King:

Attached are the comments from the Alaska Oil and Gas Association (AOGA) regarding the EIS for the State of Alaska ACMP amendments. Please confirm that you received this email and attached comments.

Thank you.

Kara Moriarty
Alaska Oil & Gas Association
121 W. Fireweed Lane, #207
Anchorage, AK 99503
(907)272-1481
Fax: (907)279-8114
moriarty@aoga.org

AOGA Written Comments on OCRM EIS 080505.doc

Content-Type: application/msword
Content-Encoding: base64

Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114
Email: brady@aoga.org
Judith Brady, Executive Director

August 5, 2005

Mr. John R. King
Responsible Program Officer - Coastal Programs Division
Office of Ocean and Coastal Resource Management - National Ocean Service
SSMC4, Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

RE: Environmental Impact Statement (EIS) for the
Proposed Approval of Amendments to the Alaska
Coastal Management Program

Dear Mr. King:

AOGA is pleased to have this opportunity to provide comments to the Office of Ocean and Coastal Resource Management on the scope of the Alaska Coastal Management Program Amendments Environmental Impact Statement. AOGA is a private, nonprofit trade association whose 18 member companies account for the majority of oil and gas exploration, development, production, transportation, refining and marketing activities in Alaska.

AOGA supports the State of Alaska's analysis, most recently contained in its June 2, 2005 amendment submittal to OCRM, that the AMCP amendments comply with the requirements of the Coastal Zone Management Act and is implementing regulations at 15 CFR Part 923.

AOGA believes that the mandate of OCRM in this EIS process is (1) to verify that the ACMP amendments comply with the requirements of the CZMA (as the OCRM's preliminary approval indicates) and (2) to assess the environmental, social and socioeconomic effects of the amendments with respect to coastal resources and uses.

When the Alaska Coastal Management Act (ACMA) was passed by the Alaska legislature in 1977 (the year the Clean Water Act was amended by Congress), the comprehensive body of federal and state environmental laws and regulations was still being developed and was not fully in place. Title 29 planning and zoning ordinances and regulations for a number of Alaska local governments were also in their infancy at that time. Today, the federal and state statutory and regulatory framework addresses many of the environmental and development concerns that the ACMP was originally intended to address. One of the catalysts for passage of HB 191 and the other ACMP amendments was the fact that the ACMP has been overtaken by other federal, state, and local regulatory authorities. The overlap between the ACMP and other regulatory authorities

is the most significant fact for OCRM to consider as it conducts its analysis of the environmental impacts of the ACMP amendments.

The level of environmental protection of coastal resources has not changed as a result of HB 191 and AOGA supported these changes for many reasons. Today, a major resource development project located in the coastal zone may require on the order of three dozen permits and authorizations from federal, state and local government agencies. Most importantly, HB 191 recognized the significant evolution of environmental protection provided by these federal and state regulatory programs since the inception of the ACMP and substantial duplication, complexity and uncertainty were removed to ensure timely issuance of permits. In particular, it made Alaska Department of Environmental Conservation (ADEC) permits and authorizations automatically consistent upon issuance.

The focus has changed to ensure that matters of local concern, not otherwise addressed by the large body of federal and state laws, drive the development-specific coastal resource protection measures and requirements for development projects. Attached to this letter is a list of environmental laws and regulations at the federal and state levels which typically apply to oil and gas activities in Alaska's coastal zone. AOGA encourages OCRM to conduct a "gap" analysis as part of the EIS process to identify those coastal resources and uses managed by these laws and regulations and what is protected or managed by the statewide standards. We expect that such an analysis would support the points made in this letter.

In addition to HB 191 and the new ACMP regulations, which are the subject of OCRM's EIS, the State also implemented significant reforms with respect to ACMP management and the coordination of project permitting through the creation of the Office of Project Management and Permitting in the Department of Natural Resources. These permit streamlining reforms fully conform to the coastal program management requirements specified in 15 CFR Part 923 Subpart E such as a clearly defined organizational structure and a single agency designated to manage the program.

A concern has been expressed by some Alaska Coastal Districts that the narrowed focus of enforceable policies contained in the ACMP amendments reduces the district's involvement in decisions regarding coastal development. There are no changes in the ACMP amendments that affect the core of the consistency review process and local involvement.

HB 191 and its implementing regulations establish bright lines for the scope and applicability of consistency reviews and this refocus of the ACMP fully complies with the program management mandates of 15 CFR Part 923 Subpart E which allows states to adopt one or a combination of techniques to manage coastal resources. The state has elected to continue the combination of Techniques A (local implementation) and B (state regulation of coastal land and water uses) adopted in the originally approved program but to modify this balance through narrowing the focus to matters of local concern (Technique A) and broad application statewide standards (Technique B). Under the CZMA, a state program based solely on management technique B would also be approvable. However, Alaska recognized the importance of local involvement given

the diverse geography and population of the state. This delegation of authority to local districts is purely voluntary on the state's part with respect to the mandates of the CZMA.

In addition, many of the regulatory programs on the attached list have their own processes for public comment and consultation in addition to the permit reviews under the ACMP umbrella. Most of the permits and authorizations under the ADEC "carve out" have their own public comment processes and administrative procedures to challenge the agency's decisions. Another significant reform provided by HB 191 was to require districts to revise their coastal program policies so that they did not duplicate federal or state laws and regulations unless the policies relate to a matter of local concern. This appropriately focused the scope of district enforceable policies. The definition of a "matter of local concern" is a specific coastal use or resource within a defined portion of a district's coastal zone, that is (1) demonstrated as sensitive to development, (2) not adequately addressed by state or federal law, and (3) of unique concern to the coastal district as demonstrated by local usage or scientific evidence. This important change allows coastal districts to focus on local matters in a regulatory arena that is already comprehensive and complex. AOGA understands that the State has made a major effort to assist districts in crafting policies that meet the requirements of HB 191 and the new ACMP regulations and the districts have secured through legislation an extension of time to revise their plans.

AOGA's support of the permit streamlining and permit management benefits of the ACMP amendments does not mean that our members' commitment to environmentally responsible development and full consultation with those affected by our activities has changed. This regulatory reform focus appears to have been lost in the debate over the ACMP amendments. Further, with the exception of ADEC's regulatory authorities, coastal district management programs may still designate areas of specific uses or resource values and develop enforceable policies to address those uses and resources.

We understand that the purpose of this comment opportunity is to assist OCRM in its determination of what needs to be addressed in the EIS. For the reasons discussed in this letter, we believe that the only change to the status quo that will result from the ACMP amendments will be a better functioning permit system. If this improved process results in any "on-the-ground" impacts, they will have everything to do with a more efficient permit system and nothing to do with the alteration of any environmental standards. Thank you for this opportunity to provide these scoping comments on the ACMP amendments EIS.



JUDITH BRADY
Executive Director

Cc: Mr. Tom Irwin, Commissioner of Natural Resources, State of Alaska
Mr. Bill Jeffress, Director, OPMP
Mr. Randy Bates, Deputy Director, OPMP

Attachment 1

List of Environmental Laws and Regulations Related to Alaska Oil and Gas Development

Federal

	<u>Scope</u>
National Environmental Policy Act (NEPA)	Environmental/social impacts of whole project
Clean Water Act U.S. Army Corps of Engineers Sec. 404/10	Construction in wetlands and navigable waters
Clean Water Act National Pollutant Discharge Elimination System (Sec. 402)	Waste water and storm water Discharges
Endangered Species Act Sec. 7 Consultation (USFWS, NMFS)	Endangered and threatened species
Marine Mammal Protection Act Letter of Authorization, Incidental Harassment Authorization (NMFS, USFWS)	Marine mammal takes
Bureau of Land Management Oil and Gas Permitting (NPRA) and Lease Conditions ¹	Exploration and development
Bureau of Land Management Pipeline Right-of-Way ²	Pipeline construction and operations
Outer Continental Shelf Lands Act Minerals Management Service (MMS)	OCS exploration, development and production
Oil Pollution Act of 1990	Oil spill contingency plan requirements
Executive Order 12989 Environmental Justice	Consideration of effects on minorities of federal actions

¹ Federal lands excluded from coastal zone

² ditto

Executive Order 13175 Consultation
With Tribes

Consultation with tribes on
federal actions (e.g. permit reviews)

National Historic Preservation Act

Protection of historic and cultural resources

Resource Conservation and Recovery Act
(EPA)

Handling, transport and disposal
of hazardous wastes

Underground Injection Control Program/
Safe Drinking Water Act (EPA)

Class I disposal wells

Spill Prevention, Control and
Countermeasures Plan (EPA)

Regulation of oil containers
(tanks etc.)

Federally-delegated (State of Alaska)

Clean Air Act New Source Review/
Prevention of Significant Deterioration
(Alaska Department of Environmental
Conservation)

Construction permits
air emissions

Clean Air Act Title V
(Alaska Department of Environmental
Conservation)

Operating permits
air emissions

Underground Injection Control Program/
Safe Drinking Water Act (Alaska Oil
Conservation Commission)

Class II EOR and disposal wells

Coastal Zone Management Act/Alaska
Coastal Management Program
(DNR/OPMP)

Coastal zone consistency

State of Alaska

Alaska Department of Environmental
Conservation Solid Waste Management

Solid waste facility permits (e.g.
grind and inject)

Alaska Department of Environmental
Conservation

Oil Discharge Prevention and
Contingency Plan

Alaska Department of Environmental
Conservation

Permit to Construct (waste water
disposal/drinking water system)

Alaska Department of Environmental Waste water disposal permit	NPDES Application and Class I Disposal Well
Alaska Department of Environmental Conservation Sec. 401 Water Quality Certification	Certification of Clean Water Sec. 402 (NPDES) and 404 permits
Alaska Department of Natural Resources Pipeline Right-of-Way Leasing	Common carrier pipelines
Alaska Department of Natural Resources Unit Plan of Development	Description of proposed activities With Unit Agreement
Alaska Department of Natural Resources Lease Plan and Unit Plan of Operations	Description of exploration or development activities on state leases
Alaska Department of Natural Resources Miscellaneous Land Use	Permits for activities on state (e.g. tundra travel, surveys, ice roads)
Alaska Department of Natural Resources Material Sales Contract	Gravel extraction on state lands (Mining and Rehabilitation Plan)
Alaska Department of Natural Resources Temporary Water Use and Water Rights	Permits for water use (consumptive and non-consumptive)
Alaska Department of Natural Resources Title 41 Fish Habitat	Permits for activities in fish streams
Alaska Oil and Gas Conservation Permits to Drill	Permits for exploration and development wells
State Historic Preservation Office	Protection of historical and archeological resources (clearance surveys)

[Fwd: ACMP Program]

Subject: [Fwd: ACMP Program]
From: "John King" <John.King@noaa.gov>
Date: Fri, 05 Aug 2005 14:33:55 -0400
To: Helen Bass <Helen.Bass@noaa.gov>

----- Original Message -----

Subject: ACMP Program
Date: Fri, 5 Aug 2005 11:09:23 -0700 (PDT)
From: helen mitchell <asailuk54@yahoo.com>
To: John.King@noaa.gov

John King
Office of Ocean and Coastal Resource Management NOAA

Dear Mr. King:

The City of Shungnak submits these brief comments on the scope of the environmental impact statement for the Alaska Coastal Management Program (ACMP) changes.

The changes to the ACMP are complex, and they can be expected to have significant impacts to subsistence and other coastal resources. The EIS should address the effects of removing air and water quality issues from the ACMP reviews, elimination of the state mining standard, and elimination of reviews of projects inland of the coastal zone. For example, there are at least two large mines near our community that may be developed in the near future. These mines are located just outside of the coastal zone. While mining projects can have economic impacts for our community, they also may have significant impacts on subsistence uses.

We hope the EIS process will include meaningful involvement of both Alaska communities and tribal organizations.

Sincerely,

Helen Mitchell
City of Shungnak

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From: "John King" <John.King@noaa.gov>
Date: Fri, 05 Aug 2005 14:33:55 -0400
To: Helen Bass <Helen.Bass@noaa.gov>

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Anchorage, AK 99503
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Alaska Oil and Gas Association



121 W. Fireweed Lane, Suite 207
Anchorage, Alaska 99503-2035
Phone: (907) 272-1481 Fax: (907) 279-8114
Email: brady@aoga.org
Judith Brady, Executive Director

August 5, 2005

Mr. John R. King
Responsible Program Officer - Coastal Programs Division
Office of Ocean and Coastal Resource Management - National Ocean Service
SSMC4, Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

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The focus has changed to ensure that matters of local concern, not otherwise addressed by the large body of federal and state laws, drive the development-specific coastal resource protection measures and requirements for development projects. Attached to this letter is a list of environmental laws and regulations at the federal and state levels which typically apply to oil and gas activities in Alaska's coastal zone. AOGA encourages OCRM to conduct a "gap" analysis as part of the EIS process to identify those coastal resources and uses managed by these laws and regulations and what is protected or managed by the statewide standards. We expect that such an analysis would support the points made in this letter.

In addition to HB 191 and the new ACMP regulations, which are the subject of OCRM's EIS, the State also implemented significant reforms with respect to ACMP management and the coordination of project permitting through the creation of the Office of Project Management and Permitting in the Department of Natural Resources. These permit streamlining reforms fully conform to the coastal program management requirements specified in 15 CFR Part 923 Subpart E such as a clearly defined organizational structure and a single agency designated to manage the program.

A concern has been expressed by some Alaska Coastal Districts that the narrowed focus of enforceable policies contained in the ACMP amendments reduces the district's involvement in decisions regarding coastal development. There are no changes in the ACMP amendments that affect the core of the consistency review process and local involvement.

HB 191 and its implementing regulations establish bright lines for the scope and applicability of consistency reviews and this refocus of the ACMP fully complies with the program management mandates of 15 CFR Part 923 Subpart E which allows states to adopt one or a combination of techniques to manage coastal resources. The state has elected to continue the combination of Techniques A (local implementation) and B (state regulation of coastal land and water uses) adopted in the originally approved program but to modify this balance through narrowing the focus to matters of local concern (Technique A) and broad application statewide standards (Technique B). Under the CZMA, a state program based solely on management technique B would also be approvable. However, Alaska recognized the importance of local involvement given

the diverse geography and population of the state. This delegation of authority to local districts is purely voluntary on the state's part with respect to the mandates of the CZMA. In addition, many of the regulatory programs on the attached list have their own processes for public comment and consultation in addition to the permit reviews under the ACMP umbrella. Most of the permits and authorizations under the ADEC "carve out" have their own public comment processes and administrative procedures to challenge the agency's decisions. Another significant reform provided by HB 191 was to require districts to revise their coastal program policies so that they did not duplicate federal or state laws and regulations unless the policies relate to a matter of local concern. This appropriately focused the scope of district enforceable policies. The definition of a "matter of local concern" is a specific coastal use or resource within a defined portion of a district's coastal zone, that is (1) demonstrated as sensitive to development, (2) not adequately addressed by state or federal law, and (3) of unique concern to the coastal district as demonstrated by local usage or scientific evidence. This important change allows coastal districts to focus on local matters in a regulatory arena that is already comprehensive and complex. AOGA understands that the State has made a major effort to assist districts in crafting policies that meet the requirements of HB 191 and the new ACMP regulations and the districts have secured through legislation an extension of time to revise their plans.

AOGA's support of the permit streamlining and permit management benefits of the ACMP amendments does not mean that our members' commitment to environmentally responsible development and full consultation with those affected by our activities has changed. This regulatory reform focus appears to have been lost in the debate over the ACMP amendments. Further, with the exception of ADEC's regulatory authorities, coastal district management programs may still designate areas of specific uses or resource values and develop enforceable policies to address those uses and resources.

We understand that the purpose of this comment opportunity is to assist OCRM in its determination of what needs to be addressed in the EIS. For the reasons discussed in this letter, we believe that the only change to the status quo that will result from the ACMP amendments will be a better functioning permit system. If this improved process results in any "on-the-ground" impacts, they will have everything to do with a more efficient permit system and nothing to do with the alteration of any environmental standards. Thank you for this opportunity to provide these scoping comments on the ACMP amendments EIS.



JUDITH BRADY
Executive Director

Cc: Mr. Tom Irwin, Commissioner of Natural Resources, State of Alaska
Mr. Bill Jeffress, Director, OPMP
Mr. Randy Bates, Deputy Director, OPMP

Attachment 1

List of Environmental Laws and Regulations Related to Alaska Oil and Gas Development

Federal

Scope

National Environmental Policy Act (NEPA)	Environmental/social impacts of whole project
Clean Water Act U.S. Army Corps of Engineers Sec. 404/10	Construction in wetlands and navigable waters
Clean Water Act National Pollutant Discharge Elimination System (Sec. 402)	Waste water and storm water Discharges
Endangered Species Act Sec. 7 Consultation (USFWS, NMFS)	Endangered and threatened species
Marine Mammal Protection Act Letter of Authorization, Incidental Harassment Authorization (NMFS, USFWS)	Marine mammal takes
Bureau of Land Management Oil and Gas Permitting (NPRA) and Lease Conditions ¹	Exploration and development
Bureau of Land Management Pipeline Right-of-Way ²	Pipeline construction and operations
Outer Continental Shelf Lands Act Minerals Management Service (MMS)	OCS exploration, development and production
Oil Pollution Act of 1990	Oil spill contingency plan requirements
Executive Order 12989 Environmental Justice	Consideration of effects on minorities of federal actions

¹ Federal lands excluded from coastal zone

² ditto

Executive Order 13175 Consultation
With Tribes

Consultation with tribes on
federal actions (e.g. permit reviews)

National Historic Preservation Act

Protection of historic and cultural resources

Resource Conservation and Recovery Act
(EPA)

Handling, transport and disposal
of hazardous wastes

Underground Injection Control Program/
Safe Drinking Water Act (EPA)

Class I disposal wells

Spill Prevention, Control and
Countermeasures Plan (EPA)

Regulation of oil containers
(tanks etc.)

Federally-delegated (State of Alaska)

Clean Air Act New Source Review/
Prevention of Significant Deterioration
(Alaska Department of Environmental
Conservation)

Construction permits
air emissions

Clean Air Act Title V
(Alaska Department of Environmental
Conservation)

Operating permits
air emissions

Underground Injection Control Program/
Safe Drinking Water Act (Alaska Oil
Conservation Commission)

Class II EOR and disposal wells

Coastal Zone Management Act/Alaska
Coastal Management Program
(DNR/OPMP)

Coastal zone consistency

State of Alaska

Alaska Department of Environmental
Conservation Solid Waste Management

Solid waste facility permits (e.g.
grind and inject)

Alaska Department of Environmental
Conservation

Oil Discharge Prevention and
Contingency Plan

Alaska Department of Environmental
Conservation

Permit to Construct (waste water
disposal/drinking water system)

Alaska Department of Environmental Waste water disposal permit	NPDES Application and Class I Disposal Well
Alaska Department of Environmental Conservation Sec. 401 Water Quality Certification	Certification of Clean Water Sec. 402 (NPDES) and 404 permits
Alaska Department of Natural Resources Pipeline Right-of-Way Leasing	Common carrier pipelines
Alaska Department of Natural Resources Unit Plan of Development	Description of proposed activities With Unit Agreement
Alaska Department of Natural Resources Lease Plan and Unit Plan of Operations	Description of exploration or development activities on state leases
Alaska Department of Natural Resources Miscellaneous Land Use	Permits for activities on state (e.g. tundra travel, surveys, ice roads)
Alaska Department of Natural Resources Material Sales Contract	Gravel extraction on state lands (Mining and Rehabilitation Plan)
Alaska Department of Natural Resources Temporary Water Use and Water Rights	Permits for water use (consumptive and non-consumptive)
Alaska Department of Natural Resources Title 41 Fish Habitat	Permits for activities in fish streams
Alaska Oil and Gas Conservation Permits to Drill	Permits for exploration and development wells
State Historic Preservation Office	Protection of historical and archeological resources (clearance surveys)

[Fwd: [Fwd: Scoping comments ACMP]]

Subject: [Fwd: [Fwd: Scoping comments ACMP]]
From: "Gregory Bass" <Gregory.Bass@noaa.gov>
Date: Fri, 05 Aug 2005 17:06:29 -0400
To: Helen Bass <Helen.Bass@noaa.gov>

Misrouted to me.

--

- Greg Bass, NMAOx1, 301-713-3425 x179

----- Original Message -----

Subject: [Fwd: Scoping comments ACMP]
Date: Fri, 05 Aug 2005 15:34:58 -0400
From: "John King" <John.King@noaa.gov>
Organization: NOAA/Office of Ocean & Coastal Resource Management
To: "Helen Bass <Helen.Bass@noaa.gov> >> Gregory Bass" <Gregory.Bass@noaa.gov>

----- Original Message -----

Subject: Scoping comments ACMP
Date: Fri, 05 Aug 2005 11:17:11 -0800
From: Sandy Harbanuk <sandyharb@ak.net>
To: John.King@noaa.gov, helen.bass@noaa.gov

Dear Mr King and Ms Bass:

I have attached scoping comments for the proposed amendment to the Alaska Coastal Management Program. Please feel free to contact me with any questions.

Thank you.

Sandy Harbanuk
Juneau, Alaska

NEPA scoping comments.doc

Content-Type: application/msword
Content-Encoding: base64

August 5, 2005

John King
Responsible Program Manager
Coastal Program Division, OCRM
National Ocean Service, SSMC4, Room 11305
1305 East-West Highway
Silver Spring, MD 20910-3281

Dear Mr. King:

Please accept my comments concerning the proposed amendment to the Alaska Coastal Management Program (ACMP) as part of the scoping process under NEPA.

The schedule for the EIS process is insufficient to allow a full and fair examination of the effects of the changes to the ACMP. In the history of the CZMA, no other coastal program in the United States has undergone such an extensive overhaul, with disintegration of program elements and divestment of important protections for coastal uses and resources.

The development of the regulations by the Alaska Department of Natural Resources (DNR) to implement the currently proposed ACMP was similarly rushed, with many of the implications of the regulations only realized by the department itself after the regulations had been set in place. Some of these realizations resulted in late-breaking changes in the regulations; most were simply shrugged off as unfortunate additional restrictions on coastal communities' participation or local control. In many instances DNR and the Alaska Department of Law have been unable to clarify the meaning of the regulations, to recognize unintended ramifications of the regulations or to give clear guidance to coastal districts regarding implementation. Thus workshops and teleconferences have been conducted in a by-the-seat-of-the-pants fashion, with answers to coastal districts' questions left dangling and a lack of a clear idea of what's included or required by the proposed ACMP amendment. This confusion can only be worse for project applicants.

Previous changes to the ACMP have been undertaken with a sincere intention to improve, rather than dismantle, the program. These previous changes included strong public participation with representation from around the state on the Coastal Policy Council, which has been abolished. Throughout the current process, DNR has repeatedly encouraged coastal districts to do minimal work to develop their plans, repeatedly suggesting that the individual plans can be amended at any time. The EIS should evaluate the corrugated regulatory landscape the coastal districts are expected to skate through and the resulting socioeconomic effects on vast areas of the state. Since the regulations promulgated by the state to implement the amendment are so rigid and restrictive, that

evaluation should include an evaluation of the ability of coastal districts to respond to future changes to federal and state laws and regulations that affect the uses and resources of the coastal zone.

The alternatives proposed for the ACMP are insufficient. Additional alternatives should be developed, including alternatives that provide more flexibility to coastal districts for the development of enforceable policies and alternatives less severe than removing consideration of air and water quality from the process, that include habitat standards that recognize the living resources dependent on the coast, and/or do not restrict districts to applying policies to a hopscotch board of designated areas. While an "up or down vote" may be reasonable for a political appointment, amending management of the coastal zone of the state with the longest coast in the nation and a coastal area that is home to the majority of the state's population requires a more nuanced approach. The most recent amendment to the ACMP that was concluded in 2002 was conducted over several years and with ample participation from around the state. This allowed for much give-and-take and for consensus to be reached.

The "no action" alternative should be thoroughly evaluated for its impacts to coastal uses and resources in the 21st century of challenges such as arctic warming and resource development pressures.

Although the stated purpose of the ACMP amendment was "to improve the State's consistency review process both in timing and predictability, reduce duplication of permit review with uneven or vague standards, and provide certainty for capital commitments," the amendment and its implementing regulations fail to achieve the stated intentions. The proposed amendment has created confusion, uneven and convoluted standards, and a disconnected playing field for applicants. The EIS should thoroughly evaluate the conflicting guidance issued by DNR, the peculiar terms and concepts "legitimately inadequately addressed," "more specific but not more stringent"), the different standards for the statewide standards (application, reach, and effects all vary widely), the additional requirements for applicants (OPMP is not a one-stop permitting agency since many of the previously networked permitting processes have been uncoupled) and other muddled elements of the amendment and regulations.

The proposed amendment would hurt coastal uses and resources and the inhabitants of coastal communities by its inflexibility. The EIS should evaluate the effects of such program elements as designated areas that must be mapped and described in great detail, which effectively requires coastal districts to project potential developments and lock in zoning that may later render district communities and residents unable to respond to changes such as those resulting from climate change, availability of resources, changing migration patterns, availability of new technologies, and unexpected economic opportunities or disasters.

The dewatering of the ACMP through the DEC "carve-out," the gutting of the habitat standard, hamstringing of the subsistence standard, and the dismemberment of habitat authorities must be thoroughly evaluated in the EIS.

The EIS should analyze who benefits from the proposed amendment and who loses. For instance, in a state with great mining potential and some enormous mining projects under exploration in coastal areas, how does the lack of a mining standard affect coastal districts and communities, and how may they address mining in their district plans? If, as DNR claims, the amendment and new regulations add certainty for capital commitments, how is that effect achieved? How do coastal zone residents, indeed, state residents benefit from the loss of ability to address effects of projects on the Outer Continental Shelf? How will marine and other resources that are shared by many nations benefit from the amended ACMP?

The EIS should thoroughly evaluate the due deference accorded coastal districts under the existing ACMP and the due deference that would be accorded to districts under the proposed amendment and its implementing regulations.

The NEPA scoping period for the proposed amendment to the ACMP should be extended and scoping should be conducted in additional communities. By conducting this scoping so briefly and during Alaska's summer, OCRM is disenfranchising the many in this vast state who must be away from their communities for subsistence, commercial fishing, seasonal forest firefighting, and many other activities that require residents to be away from their communities in the summer. Such an extensive and significant overhaul of the coastal program for a state with a mostly pristine coastal zone with communities spread along thousands of miles of coast requires a more substantial effort at outreach and communication before important protections and rights are lost.

Thank you for the opportunity to comment.

Sincerely,

Sandy Harbanuk
604 Fourth Street
Juneau, Alaska 99801
907/586-2207
sandyharb@ak.net

Subject: FW - AK EIS comments
From: "John King" <John.King@noaa.gov>
Date: Mon, 08 Aug 2005 12:17:36 -0400
To: Helen Bass <Helen.Bass@noaa.gov>

----- Original Message -----

Date: Sat, 6 Aug 2005 12:24:02 -0800
From: Dr. Lynn Zender <lzender@zender-engr.net>
To: <john.king@noaa.gov>
CC: <chris.stevens@noaa.gov>, <sscbalo@zender-engr.net>

Good day, I am writing to comment on the intent to prepare an EIS for approval of Amendments to the Alaska Coastal Management Program. The changes that the State of Alaska has proposed will likely have a substantial and deleterious effect on Coastal and Lower Kuskokwim and Yukon River Communities. These communities have not been consulted by the State in an adequate matter as required by law. The State continues its policies of equating ANCSA corporations to Native communities, and to hold any information meetings in Bethel. It is extremely difficult for Coastal and lower River Village leaders and residents to make a trip to Bethel. Consequently any testimony that the State receives has been heavily weighted with comments from pro-development interests, including Anchorage firms. In fact, the vast majority of stakeholders, those that would be most directly impacted by the State's Amendments are opposed to any changes that could negatively impact their traditional subsistence areas.

We work with many of the affected communities and their governments closely. Non-hub Native Villages have not been consulted in a manner that has informed them of the exact nature of the changes, or how the changes could affect their communities.

As an example, we work with a group of 6 sovereign coastal Tribal governments and communities in the Nelson Island Area that finished a three day meeting on July 31st. On Friday, the Cenaliulriit Coastal Management District presented the State's proposed amendments to the Coastal Management Program. We have videotaped testimonies by Tribal, City, and Traditional leaders, as well as numerous resident stakeholders who stated that they were not aware of the proposed changes and were strongly opposed to them. This intensity of feeling against any impact to subsistence or erosion of traditional authority over traditional use land and water matches that which we have heard when working with other villages in this region.

Of particular concern to these stakeholders are the changes that the State proposes in regards to subsistence. Any potential impact to subsistence is not acceptable to these communities. Their entire way of life depends on the continuation of subsistence lifestyle. The non-hub 25 communities in the Lower Kuskowkim School District speak Yupik as a first language, and maintain a distinct culture that is the last indigenous group in the United States that have kept their traditions, language, and lifestyle intact. If subsistence is impacted, even at a level considered "minimal", research indicates that the concerns of the communities will disproportionately affect the continuance of that lifestyle and traditions. The State's amendments disproportionately affect Alaska Native communities.

Several changes to the State's plan have weakened the subsistence standard. Provisions to assure access to subsistence resources have been removed. District policies can only be established for areas designated for subsistence use. Policies may only address the use and not the resource itself. It remains to

be seen what evidence DNR will require for establishment of a subsistence use area (subsistence use changes from year-to-year due to changes in migration patterns). Comments on draft plans by DNR state that the "avoid or minimize" clause in the standard adequately addresses most issues and that districts could only "allow or disallow" a use. The standard does not include a mitigation clause even though many development projects that will proceed, because of the imbalance of corporate and outside interests local impacted populations, will have adverse impacts where mitigation would be appropriate, and should be required.

Further, the mining standard has been replaced by a sand and gravel extraction standard that only applies to areas with saltwater or barrier islands. Placer mining and hard rock mining are no longer a "subject use" of the ACMP.

Finally, the proposed standard removes the requirement to maintain and enhance habitats unless a project meets the three-part test. DNR is interpreting the management measures in subpart (b) of the standard as the only matters that can be addressed for each habitat listed. Most references to living resources have been removed from the management measures in subpart (b). DNR is saying that the "avoid, minimize or mitigate" clause in the standard adequately addresses all impacts to habitat (but it says that districts can establish policies that "allow or disallow" uses). Upland habitats have been removed as a special category in the standard. Districts may only establish policies for areas they designate as important habitat (it will be difficult to establish important habitats because of the new requirements). State law is inadequate to protect habitats (the Office of Habitat Management and Permitting has only two narrow laws and no regulations). It continues to be amended towards less and less protection of habitat, which is critical to subsistence.

If the State amendments are allowed as proposed, cultural loss and adverse effects on community well-being could be irrevocably added to already distressed communities. Subsistence practices and the culture based on it has been demonstrated to be key to community resiliency.

In closing, I urge you to set up public scoping meetings in non-hub villages, working in cooperation with local leaders and Inter-tribal or community advocacy groups that are skilled in interfacing with communities on technical matters. An adequate public scoping process must be included before the State's amendments should be considered or approved.

Sincerely,

Lynn Zender, Ph.D.
Zender Environmental Science and Planning Services
308 G St. Ste. 312
Anchorage, AK 99501

tel: 907 277-2111
fax: 907 222-3416
email: lzender@zender-engr.net

[Fwd: Mayor Ahmaogak's comments on ACMP]

Subject: [Fwd: Mayor Ahmaogak's comments on ACMP]
From: "John King" <John.King@noaa.gov>
Date: Mon, 08 Aug 2005 12:19:25 -0400
To: Helen Bass <Helen.Bass@noaa.gov>

----- Original Message -----

Subject: Mayor Ahmaogak's comments on ACMP
Date: Fri, 5 Aug 2005 16:53:07 -0800
From: Karla Kolash <Karla.Kolash@north-slope.org>
To: <john.king@noaa.gov>
CC: Malia Teixeira <Malia.Teixeira@north-slope.org>

Attached are the comments from George N. Ahmaogak, Sr., Mayor of the North Slope Borough in Barrow, Alaska.
<<Mayor's comments OCRM 8-5-05.doc>>

Mayor's comments OCRM 8-5-05.doc

Content-Type: application/msword
Content-Encoding: base64